

## **STATEMENT OF FACTS**

On June 4, 2018, the juvenile, J.S. committed Criminal Trespass. On July 2018, J.S. was adjudicated for committing Criminal Trespass and sentenced to 30 days commitment to a juvenile facility, all suspended and 1 year probation. In less than a month, a Motion to Revoke Probation was filed for use/possession of alcohol, failure to complete community service work, and violation of curfew. On August 8, 2018, J.S. admitted the probation violation and received an additional 40 hours of public service work as a sentence. J.S. made it 2 months before he was in trouble again. On November 10, 2018 J.S. committed Criminal Mischief while on probation. On November 15, 2018, the 2<sup>nd</sup> probation revocation against J.S. was filed for testing positive for marijuana, curfew violation, and new criminal conduct (Criminal Mischief). Before appearing in court for the Criminal Mischief charges, J.S. committed DV Assault, Assault, and Criminal Mischief on December 11, 2018. J.S.'s 3<sup>rd</sup> probation revocation was filed on December 11, 2018, for the new criminal conduct. J.S. was held in custody for 48 hours and then released to his mother.

On March 4, 2019, J.S. appeared in the District Court for the 3<sup>rd</sup> Motion to revoke probation, the adjudication hearing for Criminal Mischief, and the adjudication hearing for DV Assault, Assault, and Criminal Mischief. J.S. admitted to all of the new charges and the probation violation by way of an "open" admission, (plea); there was no agreement between the parties regarding the sentence. (Adjudication Hearing Transcript, hereinafter referred to as "T", at pages 3, 4, and 5). The State submitted a written recommendation that J.S. be committed,

indeterminate to age 18. (T at p 5). When the Court asked for a summary of the recommendation, the State, through the JCCO explained,

“Your Honor, we have worked tirelessly to try and get [P.S.] some services. We’ve referred him to substance abuse counseling, for multisystemic therapy counseling. He continues to violate the conditions at home, school, and even meeting with me at probation. Just a recently as this morning, he refused to go to school.

As we’ve said, [P.S.] is not the most violent or the most criminal person to come down the pike, but he is getting that way, and we’re hoping to try and head things off at the pass. He does not meet level of care for out-of-home placement. However, I do believe that with a commitment P.S. would be eligible for a referral through the kind of questions to what’s called a regroup program at the old Hinckley program, and I think that would probably be what [P.S.] needs, and I think that will be the best to get services for him.” 9T at 6).

The JCCO went on to explain that the program that the DOC opened, is like a halfway house that manages, supervises, and educates children who are a disciplinary problem. (T at 7). The JCCO also discussed that there are no other programs available to P.S. because he is a disciplinary problem not a mental health problem. (T at 8).

Counsel P.S. argued for a commitment of 30 days. P.S. argued that commitment to age 18, indeterminate, was disproportionate. (T at 8). P.S. agreed that there were no in home or out of home services that would meet the needs of P.S. short of a commitment to Long Creek. (T at 9).

P.S.’s case manager, \_\_\_\_\_ told the court that P.S. does not meet the mental health criteria for a residential facility, “and even if he did, there’s such a long wait.” (T at 11). The case worker also explained, “And there are some safety concerns, and it – seems to be – it’s a dominoes effect. He seems to be getting worse, and it’s in the criminal area rather than the mental health area.” (Id.) The court clarified that to the caseworker’s

knowledge there are no available services or an adequate alternative short of a commitment at this point to provide the services that P.S. needs. (T at 11, 12).

J.S. addressed the court personally, “well, I’m going to -- I’m -- if I can get off with a 30 day sentence, I would go to school every day, meet with        when I’m supposed to, like everything on track.” (T at 12). When the court asked “What changed?” J.S. responded, “I’ve -- nothing that I know of.” Id.

The court then ruled explaining directly to P.S.,

“This is a very serious matter. The litany of offenses here -- the number of offenses -- don’t amount to the most serious offenses that we see. What is serious in the context of this case is the fact that they have happened in defiance of every effort to try to work with you that you have failed to meet. Now, typically I think we could set you up with really intensive services in the community, working with your mother, and I think, in fact, we’ve tried to do some of that. You haven’t been willing to work with those folks. But ideally we’d have other services available as well that are perhaps a bit more assertive and are a bit more local. We don’t have those services, and I’m satisfied there is no alternative but to commit you to Long Creek, and I don’t think a shock sentence is going to do it. It’s going to be till age 18. They’ll work with you there.” (T at 16, 17).

The court told J.S. that the one thing that convinces the court that it needs to do this is that the court has seen so many young people in the criminal system where the goals are punishment and retribution. But, here in the juvenile system, with commitment, there are programs geared towards rehabilitation. (T at 17).

## **QUESTION PRESENTED**

DID THE COURT ERR OR OTHERWISE ABUSE ITS DISCRETION WHEN SENTENCING J.S. TO LONG CREEK INDETERMINATE TO AGE 18?

## ARGUMENT

The court did not abuse its discretion or err in the application and interpretation of the law. Review of a juvenile disposition for an abuse of discretion “errors in the application and interpretation of Law”, “[to] [e]nsure substantial uniformity of treatment to persons in like situation,” and “so that the legislatively defined purposes of the juvenile justice system as a whole are realized.” *State v. G.F.*, 2015 ME 90, ¶¶2-3, 119 A.3d 743, as cited in *State v. J.R.* 2018 ME 117, ¶ 10, 191 A.3d 1157.

When determining a disposition for a juvenile that includes commitment, a sentencing court is given great latitude in sentencing options from 1 day all the way up to the juveniles 21<sup>st</sup> birthday. 15 M.R.S. §§3314, 3316. This latitude is partially available because of the ultimate goals of the juvenile justice system. Unlike the goals of the criminal justice system that include punishment and retribution, the goals of the juvenile system are to provide “care”, “guidance”, “safety”, “treatment”, “guidance”, with the ultimate goal of rehabilitation. Rehabilitation “to assist that juvenile in becoming a responsible and productive member of society. 15 M.R.S. §3002(1).

All of the arguments asserted by J.S. have been presented to this Court, most recently in *State v. J.R.*, 2018 ME 117, 191 A.3d 1157. J.S. argues that his case is “immediately distinguishable” as less severe from *State v. J.R.*, but upon review, the facts of J.S. and the same if not more severe than J.R. Both J.R. and J.S. were comparatively the same age. J.R. was on conditions of release when he continued to commit multiple crimes, thus violating his conditions of release. J.S. was on probation when he continued to commit more crimes, thus violating his probation. J.S. was further into the system, he was on probation, not conditions of release. J.S.

did not just violate probation by new crimes, he also refused to participate in programs and follow directions being offered to help him. Both J.R. and J.S. were ultimately convicted of a series of misdemeanors. The circumstances of J.R. and J.S. are at a minimum similar, with J.S. being arguably more serious. This Court upheld the sentence of the lower court in *State v J.R.* 2018 ME 117, 191A.3d 1157.

Like J.R., J.S. argues that commitment to age 18 was not the least restrictive alternative. But as with J.R., a 30 day sentence, while less restrictive, does not fulfill the goals of the juvenile system. J.S.'s behavior was escalating and increasing, a 30 day sentence would not address and/or provide for the rehabilitation of J.S. A 30 day sentence is purely punitive, no programs or guidance would have been provided for J.S. While 30 days would be the least restrictive sentence, 30 days would not be the least restrictive sentence while trying to provide for the needs of the juvenile and/or to meet the goals of the juvenile justice system.

Again, like J.R., J.S. argues that the court failed to determine what factors justified and indeterminate sentence as opposed to a 30 day sentence. This Court noted that “[w]e have never required the sentencing judge to address each of the factors set out [in the sentencing statute] and explicitly negate them.” *State v. Commeau*, 2004 ME 78, ¶22, 852 A.2d 70, as cited in *State v. J.R.* 2018 ME 117, ¶ 17. As in J.R., review of the record clearly demonstrates that the sentencing judge took the factors in §3313 into consideration.

Clearly the sentencing court did not abuse its discretion or err in the interpretation or application of the law when it sentenced J.S. to an indeterminate to age 18.

The Court has requested the parties address whether the court could or should have expressly further limit[ed]” the indeterminate sentence as provided in subsection §3316(2)(A) to a period of at least a year but short of P.S.” eighteenth birthday”. As stated earlier, the sentencing court had great latitude when sentencing J.S. The court could have imposed a period of detention of 1 day all the way up to the juveniles 21<sup>st</sup> birthday. The State and court were aware of the provisions §3316 at the time of sentencing. The only restriction to this section, is that the court’s sentence cannot be an indeterminate period of less than one year. Could the court have imposed an indeterminate sentence to age 16? Or age 17? Yes, it could have done that. Regarding the question of “should” it have done that, is invading the province of the sentencing court. Was it an abuse of discretion by not imposing commitment to age 16 or 17? There sentencing courts have great latitude regarding sentencing alternatives. There are no guidelines or restrictions on who or what age juvenile should receive a commitment to age 18. While the sentencing provisions for the adult criminal system sets maximum periods of incarceration for misdemeanor and felonies, the juvenile system has no such structure. This is because the purpose and goals of the juvenile system are completely different than the goals of the criminal system. The legislature has provided a sentencing structure for the values of crimes. Misdemeanors and felonies have a specific maximum period of incarceration. If the crime is committed, they can receive a certain period of punishment.

The juvenile system has no such structured periods of incarceration. The goals of the juvenile system is to treat, provide services, and ultimately rehabilitate a juvenile so that they do not enter the criminal system. How much treatment, or services needed, are not a fixed amount of time. Providing what the juvenile needs is only limited by §3316, that it cannot exceed the juveniles 21<sup>st</sup> birthday. One of the purposes of having a juvenile commitment being

indeterminate is so that, once in the system, it is the juvenile's needs that control how long they are confined. Amount of time in should never control a juvenile's sentence. The time allowed to provide for the juvenile with the opportunity to become a productive citizen controls. As this Court held, "the goals of rehabilitation and treatment can sometimes 'justify longer indeterminate sentences for juveniles.

Did the sentencing court abuse its discretion by not imposing a commitment to age 16 or 17? No. Clearly the sentence imposed was well within the provisions as appropriate, within the court's statutory authority. The sentencing court is in the best position to determine what a sentence should be for a juvenile, and unless such a sentence is an abuse of discretion, it should not be second guessed.

Wherefore, the State requests this Honorable Court to deny this appeal and uphold the sentence of lower court.

Respectfully submitted this 14 day of November.

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## **CERTIFICATE OF SERVICE**

**This is to certify** that a PDF copy and 2 paper copies of Appellees Brief have be delivered to Appellant's counsel through the U.S. Mail, prepaid, at Tebbetts Law Office, LLC, 29 Second Street, Suite 1, Presque Isle, ME 04769, on November 14, 2019.

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